4389.

SUPREME COURT OF THE UNITED STATES.

No. 145.

THE STEAM TOWBOAT SHARK, APPELLANT,

vs.

JEAN BAPTISTE PIAGGIO.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

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United States circuit court, fifth circuit, and eastern district of Louisiana.

JEAN BAPTISTE PIAGGIO, appellee, vs. The Steam Towboat SHARK, appl't. } 1760.

Pleas and proceedings before the honorable the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, being the December term, A. D. 1849, of said court, held at the city of New Orleans, in the district aforesaid, on the twentieth day of February, A. D. eighteen hundred and fifty.

Be it remembered, that heretofore, to wit, on the thirteenth day of December, A. D. eighteen hundred and forty-eight, came Messrs. Winthrop & Grymes, proctors for respondents and appellants, and filed in the clerk's office of said court a transcript of a record from the district court of the United States, for the district of Louisiana, in words and figures following, to wit:

United States district court, in and for the district of Louisiana.

In admiralty.

Be it remembered, that, on the 29th day of February, A. D. 1848, Jean Baptiste Piaggio, by his proctor, C. Roselius, came into the U. States district court, for the district of Louisiana, and filed the following libel, to wit:

To the honorable Theodore H. McCaleb, judge of the district court of the United States, within and for the district of Louisiana.

The libel and complaint of Jean Baptiste Piaggio, master and owner of the Sardinian brig "Silenzio," for himself, and on behalf and to the use and benefit of the freighters and underwriters of said brig and cargo, her tackle, apparel, and furniture, against the steam towboat "Shark," whereof now is or lately was master, and against all persons lawfully intervening for their interest in the said towboat, in a cause of standing and collision, civil and maritime. And thereupon the said Jean Baptiste Piaggio, for himself, and on behalf of the aforesaid freighters and underwriters, alleges, and articulately propounds, as follows:

First. That, on the seventh of February, 1848, said brig "Silenzio," of the burthen of two hundred and seven tons, or thereabouts, arrived at the Balize, and entered the Southwest pass, on her passage from the port of Genoa to the port of New Orleans; that, after having been towed across the bar by the steam towboat "Tennessee," she anchored at the custom-house station, where she was taken in tow by the said steam

towboat "Shark," being bound for the port of New Orleans aforesaid, with a valuable cargo on board, and being at the time a tight, staunch, and well built vessel, completely rigged and provided with tackle, apparel, and furniture, and having on board a full complement of hands to navigate said brig.

Second. That, on the morning of the 9th of February, 1848, at about five o'clock, a. m., while said brig was in tow of said steam towboat "Shark," which was to take her to the port of New Orleans, and for which service a contract had been regularly entered into with the master of said steam towboat, and when they had nearly reached a place called Poverty point, about thirty-five miles from the port of New Orleans, and in crossing the river to get on the opposite side from that the said vessel had been previously running on, the said steam towboat "Shark" caused the said brig "Silenzio" to be stranded, on the left side of the river, in front of Poverty point, where said brig remained fast, being badly grounded, and her bows raised about six feet out of the water. That at the time of said stranding, and when the brig struck, the said steam towboat "Shark," and an English bark called the Charlotte, attached to the same towboat, were forced against the said brig "Silenzio;" that, by reason and in consequence of said stranding and collision, the said brig "Silenzio" suffered great damage, three of her ribs being broken, and her keel forced out of its place and injured; and occasioning other injury to the said brig, and causing the said brig to leak at the rate of five feet per hour. That by reason and in consequence of said stranding and collision, the cargo of said brig was also seriously injured, and eight pipes of wine, containing one hundred and twenty-five gallons each, worth twenty-five cents per gallon, were entirely stove in and destroyed by the force and violence of the shock and pressure which the said brig experienced.

Third. That the said stranding, collision, damage, and injury, were suffered in consequence of the gross negligence, ignorance, inattention, carelessness, and incompetency of the persons in charge of said steam towboat Shark; said brig having been run ashore and stranded through the ignorance or negligence of the master and persons in charge of said steam towboat, at a time, and under circumstances, which shows them to have been wholly destitute of all caution and ordinary prudence.

Fourth. That after said brig "Silenzio" had been relieved from her perilous situation, she was brought to the port of New Orleans, where her cargo was unloaded with all possible despatch, and the vessel kept afloat by incessant pumping; that, as soon as her cargo was discharged, it was found indispensably necessary to send said brig to the ship yard and dry dock, for the purpose of repairing the damage and injury sustained by her as aforesaid; that said damages, as mentioned in the second article of this libel, together with dockage, detention, demurrage, and other items, amount to upwards of two thousand five hundred dollars; for which sum the said towboat "Shark" and owners are liable, for the causes and matters as above set forth.

Fifth. That all and singular the premises are true, having occurred

where the tide ebbs and flows, within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, if denied, the libellant craves leave to refer to the depositions and other proofs to be by him exhibited in the trial of this cause.

Wherefore the libellant respectfully prays, that process according to the course of courts of admiralty and of this honorable court, in causes of admiralty and maritime jurisdiction, may issue against the said steam towboat "Shark," her tackle, apparel, and furniture, now within the jurisdiction of this honorable court, and that after due proceedings had, it may please your honor to pronounce a decree in favor of the libellant against the said steam towboat "Shark;" and against all persons lawfully intervening for their interest in the said towboat, for the aforesaid sum of two thousand five hundred dollars, and to order said steamboat, her tackle, apparel, and furniture, to be sold to satisfy the claim of the libellant, and costs; and to decree such other and further relief to the libellant as to law, justice, and equity, appertains.

(Signed) C. ROSELIUS,
Proctor for libellant.

Jean Baptiste Piaggio, the libellant, maketh oath that the allegations in the foregoing libel are correct and true.

(Signed) JEAN BAPTISTE PIAGGIO.

Sworn to and subscribed before me, this 29th of February, 1848.

(Signed) N. R. JENNINGS, *Clerk.*

Order on the above libel.

In the absence of the judge from the court, let admiralty process issue as prayed for.

(Signed) N. R. JENNINGS, *Clerk.*

The President of the United States of America, to the marshal of the district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the steam towboat "Shark," her tackle, apparel, and furniture, now libelled by Jean Baptiste Piaggio, for $2,500, in the district court of the United States, for the district of Louisiana; that you do cite and admonish the owner or owners having, or pretending to have, any right, title, to or in the same, to be and appear before a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have, or can, why the said steam towboat "Shark," her tackle, apparel, and furniture, should not be condemned, and sold agreeably to the prayer of the libellant; and how you shall have executed this warrant, that you make return according to law.

Witness the honorable Theo. H. McCaleb, judge of the said court,

this twenty-ninth day of February, 1848, and the 72d year of the independence of the United States.

(Signed) N. R. JENNINGS, *Clerk*,
By BOISBLANC, *D'y clerk.*

Marshal's return on the above warrant.

Received February 29th, 1848, and on the 2d March, 1848, seized the steam towboat "Shark," her tackle, apparel, and furniture, published monition, gave notice, and in all respects complied with the law and the commands of this warrant; and on the third day of March, 1848, said steamboat was released upon Junius Beebe giving bond with Palmes, Whiting and Co., as securities for $5,000. Bond, together with this warrant, returned into court.

(Signed,) CHAS. A. LABUZAN,
Deputy U. S. Marshal.

On the 11th day of March, A. D. 1848, the following bond was filed in the clerk's office of the U. S. district court:

UNITED STATES OF AMERICA,
District of Louisiana.

Know all men by these presents, that we, Junius Beebe, manager of the Union Towboat company, claimant, as principal, and Palmes, Whitney & Co., as securities, are held and firmly bound unto Jean Baptiste Piaggio, the libellant, in the sum of five thousand dollars, lawful money of the United States, for the payment whereof to the said Jean Baptiste Piaggio, his heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, or assigns, firmly by these presents. Witness our respective names and seals herewith or hereunto affixed by us at New Orleans, this third day of March, A. D. 1848.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States, for the district of Louisiana, at the suit of Jean Baptiste Piaggio vs. the Steam Towboat "Shark," her tackle, apparel, and furniture, and numbered 6475 on the docket of the said court, commanding the marshal to seize and take into his possession the said steam towboat "Shark," which has been seized accordingly, but has been released from said seizure and delivered to said Beebe, claimant aforesaid. Now, the condition of the above obligation is such, that if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellant the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

(Erasures made before signing and approved.)

(Signed,) JUNIUS BEEBE, *Manager*, [SEAL.]
(Signed,) PALMES, & WHITNEY & CO. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed,) J. H. RINEHART.

Affidavit.

JEAN BAPTISTE PIAGGIO
vs.
The Steam Towboat "SHARK." } U. S. district court.

Jean Baptiste Piaggio makes oath that Jean Baptiste Avegno is material witness for the libellant; that said witness is about to depart from the jurisdiction of this honorable court before the trial of the cause sworn to and subscribed.

(Signed,) JEAN BAPTISTE PIAGGIO.

Before me this 10th of March, A. D. 1848.

(Signed,) N. R. JENNINGS, *Clerk*,
By A. BOISBLANC, *Deputy Clerk*.

On the 11th day of March, 1848, the following motion was entered of record:

Saturday, March 11th, A. D. 1848. Present, honorable Theo. H. McCaleb.

JEAN BAPTISTE PIAGGIO
vs.
The Steam Towboat "SHARK." } No. 6475.

On motion of C. Roselius, proctor for the libellant, and on presenting to the court the affidavit of the said libellant, it is ordered that the testimony of John Baptiste Avegno be taken before N. R. Jennings, esq., U. S. commissioner, this day at 5 o'clock, p. m., and that the respondents be notified hereof.

Deposition.

DISTRICT OF LOUISIANA.

JEAN BAPTISTE PIAGGIO
vs.
The Steam Towboat "SHARK." } No. 6475.

Commissioner's office, Saturday, March 11, 1848.

By virtue of an order from the honorable the district [court] of Louisiana, directing that the testimony of a certain witness, by name Jean Baptiste Aveigno, be taken before the undersigned commission, and that notice thereof of the time and place of taking said testimony should be given to the parties in interest.

Accordingly notice was this day issued to the proctor, John Winthrop, esq., representing the owners of the steam towboat "Shark," that the testimony of the said witness on the behalf of the libellants would be taken at the office of the undersigned commissioner this afternoon at 5 o'clock, p. m., March 11, 1848.

At 5o'clock, p. m., the libellants, represented by their proctor, C. Roselius, esq., appeared.

The proctor for the respondents did not appear; whereupon appeared Jean Baptiste Avegno, a person of sound mind and lawful age, a witness for libellants, whose testimony is to be used on the trial of the above entitled cause, who being sworn to testify the whole truth, and nothing but the truth, did depose and say.

That on the 9th day of February last, between the hours of 4 and 5 o'clock in the morning, he was on board the schooner "Frolic," made fast astern of the brig Silenzio, and at the helm of the schooner at the time, when all at once he heard a great crash, which alarmed him so much, that he hallooed out to his crew, what in the world is the matter? He saw the brig Silenzio on her beam ends, and he ran forward with his hatchet, and cut the lines in two that fastened his schooner to the said brig, and the schooner dropped a stern of a three-masted vessel, whose name he does not recollect. When he saw the brig Silenzio, she had her bow about eight feet above the water, stranded on the shore; witness remained there till about 8 o'clock in the evening; he then got under weigh; up to the time when witness left, the brig Silenzio remained in the same position.

Deponent states that it is not customary for steam towboats to run across the river at the place where the brig "Silenzio" was stranded; and says that if the steam towboat Shark had been steered with ordinary prudence and skill, and had not attempted to cross the river at the place where she did, but had gone up a little way higher, the brig "Silenzio" would not have been stranded. The morning was a clear starlight one, no fog; the brig "Silenzio" was lashed on the larboard side of towboat "Shark."

Deponent has had some experience in river navigation, and says that the steam towboat "Shark" did not cross the river at the place where the towboats usually do; that to avoid the eddy of the river, which was the cause of the stranding of the brig, the towboat ought to have gone a little above Poverty point, and then to have run across the river.

The proctor for the owners of the towboat "Shark" not being present, the proctor for the libellants consents that the cross examination of witness shall be deferred until Monday morning, the 13th inst., at 10 o'clock, or at any time thereafter.

(Signed) JEAN BAPTISTE his ⋈ mark. AVEGNO.

Monday, March 13, 1848.

Cross examined by John Winthrop, esq., proctor, for the owners of the towboat "Shark."

[Deponent] states that it was a little before daylight in the morning; and witness could not tell exactly whether the boat started a little below or a little above Poverty point. It is customary for towboats to keep close in shore, until they come up with the point, when they cross over; Poverty point is one of three or four places between the city and the mouth of the river where the current runs strongest; the moment a ves-

sel comes out of the eddy, she strikes the full force of the current; it takes a towboat with a tow about five or six minutes to cross the river at that point.

(Signed) JEAN BAPTISTE his ⋈ mark. AVEGNO.

I, N. R. Jennings, commissioner, do certify, that on the 11th day of March, A. D. 1848, I was attended by the witness, J. B. Avegno, and that the foregoing is his true deposition, as taken down by me in writing; and after being carefully read over to him, the said witness, was subscribed to in my presence. As witness my hand and seal, this 11th day of March, A. D. 1848.

(Signed) N. R. JENNINGS,
U. S. com'r.

On the 13th day of March, A. D. 1848, the following claim and answer was filed in the office of the clerk of the United States district court, district of Louisiana.

Claim and answer.

To the hon. T. H. McCaleb, judge of the district court of the United States, for the district of Louisiana.

The claim and answer of Junius Beebe, manager of the Union Towboat Co., of New Orleans, and now intervening on behalf of the company, sole owners of the steam towboat "Shark," to the libel and complaint of Baptiste Piaggio, against the said towboat "Shark," her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, alleges and articulately propounds as follows:

First. That the said towboat "Shark" is the sole property of the said company.

Second. That the respondent admits having taken in tow the brig "Silenzio," for the purpose of taking her from the mouth of the river to the city of New Orleans, but alleges and propounds that the matters and allegations, as principally set forth in said libel, are untrue and falsely stated, and that the truth is hereinafter particularly propounded.

Third. That at the time and place, as stated in the libel, the said brig, being then in tow of the shark, was on her larboard side, and the British barque Charlotte Harrison on her starboard side, while two schooners were being towed astern.

Fourth. That the tow being heavy, and the current at that time very strong, the officers of the boat took every advantage of the eddies and bends, in order to facilitate their progress; and with this view kept in the eddy below Poverty point, with the intention of crossing over to the right bank of the river as soon as the tow struck the current, as it is customary at that point. That after having struck the current, and

while in the act of crossing the river, the captain of the towboat, who was on deck, gave the order to put the helm a-port, in order to straighten the tow up, and run along the right bank of the river, hailing the vessels in tow at the same time to do the same thing. That having put his own helm a-port, he was surprised to find that the tow did not straighten up, but was quartering towards the bank, which it was rapidly approaching. That on looking round to ascertain the cause, he found at first that there was no man at the wheel on board of the "Silenzio;" and when some one did at last run to it, he misunderstood him, and placed the wheel hard a-starboard; when, on motioning to him, he reversed the wheel, and placed it a-port, as he had been previously ordered. That on finding the tow still quartering towards the shore, and refusing to obey the helm, he looked towards the wheel of the British ship "Charlotte" Harrison, on his starboard side, but not being able to see it from the wheel-house of the boat, and being satisfied that the man at the wheel must have put his helm the wrong way, he ran aft and called out "hard a-port" several times, and so loudly that it waked up the captain of the ship, who came hurrying up out of his cabin to see what was the matter.

Fifth. That all this occupied but a few minutes; during which time, however, the tow had crossed the river, and was close upon the right bank; when, finding it too late to straighten up, the captain of the towboat gave orders to back the engine, which was done as soon as possible, and three or four revolutions given, when the tow struck the bank.

Sixth. That a boat of the same line, to wit, the "Persian," which came along shortly afterwards, with ease pulled off the whole tow, with which the "Shark" proceeded up the river, landing the Silenzio at the place desired by her master.

Seventh. That at the time of these occurrences the Shark was in good order and well conditioned, with a full complement of men and officers, and an experienced captain, who was on deck at the time, in the active discharge of his duties.

Eighth. That the accident was unavoidable, and resulted principally from the confused and improper manner in which the commands of the captain of the "Shark" were obeyed by the vessels alongside at a time when the current was unusually strong; the only negligence being that of the master of the "Silenzio," in not having a competent man at the wheel.

Wherefore he prays that the libel of the said Baptiste Piaggio be dismissed, and that the said towboat "Shark" be released from the custody of the marshal, and that there be judgment in favor of respondent, with all his costs in this behalf sustained.

(Signed) WINTHROP & GRYMES,
Proctors for respondent.

Junius Beebee, being duly sworn, saith, that he is agent of and manager for the Union Towboat Company, sole owners of the tow-

boat Shark, and that the material facts and allegations in the foregoing claim and answer are true.

(Signed) JUNIUS BEEBE.

Subscribed and sworn to this 13th day of March, 1848, before me.

(Signed) N. R. JENNINGS, *Clerk*,
By A. BOISBLANC, *Dy. cl'k.*

Depositions.

JEAN BAPTISTE PIAGGIO
vs.
The STEAM TOWBOAT "SHARK."

Be it remembered, that on this 13th day of March, 1848, before me, N. R. Jennings, a commissioner, duly appointed by the circuit court of the United States, in and for the district of Louisiana, under and by virtue of the several acts of Congress made and provided, personally appeared the libellants, represented by their proctor, C. Roselius, esq., and the respondents, represented by John Winthrop, esq.; when, also, personally appeared Gilbert Morton and W. S. Brown, persons of sound mind and lawful age, witnesses for the libellants in admiralty cause, now depending, in which Jean Baptiste Piaggio is the libellant, and the steam towboat "Shark" and owners are the respondents; and the said Gilbert Morton, being by me duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say, that he is the master of the brig "Halcyon," and that about the 9th of February, his vessel, the said brig "Halcyon," was in tow by the steamboat "Shark;" and in the morning, just before daylight, the first thing that he noticed was, that the whole tow, consisting of the said brig, the brig Silenzio, an English barque, whose name witness does [not] recollect, and another vessel name not recollected, were all on shore; the brig "Silenzio" was in a very bad position, almost high and dry forward, and having the appearance of a good deal of water in her, from the fact that the stern settled down, and the pumps were going.

Deponent went on board the said brig, and discovered that in pumping her the water that came out appeared to be very red, as if mixed up with a good deal of wine. Witness inferred that the brig, being small, and the towboat, together with the British barque on the other side of her large, it had wrenched the brig, and stove some of her cargo. The steamboat "Shark" was heading six points on to the land, and the brig Silenzio, drawing considerable water, struck the bottom part, and stopt; the steamboat drawing less water, went ahead, and parted all her fastenings, running right under the bilge of the brig, and careened her over, nearly to her beam-ends; witness considers, from the position in which the brig was stranded, that she must have received considerable injury; which also seemed to be the opinion of those in charge of the "Shark" and Captain Danes, of the steamboat

"Persian," who came to assist in getting the tows off. They asked witness whether it would be prudent, in his opinion, to haul the "Silenzio" off, for fear that she might sink.

Deponent states that when in the morning as above stated he discovered all the tows to be ashore, he came to the conclusion that all hands on the "Shark" had been asleep; he went on board the Shark, and asked the master, Capt. Pinnegar, what was the cause of the tows getting ashore; who said to deponent that Poverty point being a bad place on the river, he had sent one of his own men to the wheel of the Silenzio, from the reason that they spoke no English on board of her, and that he had hailed the English barque, told them to send a man to the wheel of the barque; he saw soon afterwards that the whole tow were getting a broad sheer to port; he sung out to the English barque to port her wheel or helm; that they answered ay, ay; but the more they answered, the more they sheered; states that the reason which Capt. Pinnegar gave to witness for the tows getting on shore was, their putting the helm on board the British barque starboard instead of port; and that reason was satisfactory to witness, knowing that Capt. Pinnegar was an old hand on the river; Capt. Pinnegar told witness afterwards, that the capt. of the English barque acknowledged to Capt. Pinnegar, that when he, Capt. P., hailed the barque the first time, no one went to the wheel; when hearing Capt. P. hailing the second and third time, he the captain turned out himself; that when he turned out he saw one of his men going aft, who answered Capt. Pinnegar, aye, aye, sir, just a moment before the tow struck; and consequently Capt. Pinnegar told witness that he blamed the English barque for the whole of the accident. The S. boat "Southerner" came and took witness's vessel off before the brig "Silenzio" was removed. Deponent states that the capt. of the towboat always has command of the vessels in tow, especially those longside.

Cross examined.

Considers the capt. of the towboat in place of a pilot on the river, whose orders he is bound to obey. States that the captain was not on deck when they crossed from Poverty point to the opposite bank, but was the moment that the brig struck the bank. Witness heard the crash of the vessel's striking the bank, and he came out at that moment; he saw nothing that transpired previous to the vessel's striking.

Deponent has been a constant trader to New Orleans for many years; and knows that the current at Poverty point is very strong and the river very narrow; the captain of the "Shark" is an old and experienced hand; from the fact that the towboat crossed the river about a half to three quarters of a mile below the point where the towboats usually do cross, he supposes that Capt. Pinnegar was not on deck, before he went on board of her; that Capt. Pinnegar is one of the most careful and prudent men on the river. If the brig "Silenzio" had been on the starboard side she would have received no damage; the amount of

damage which she did receive, arose from the weight of the tow and the strength of the current. Witness did not see at what point the "Shark" left the right bank of the river, he being then in his berth.

Examination in chief resumed. States that the "Shark" crossed the river from a half to three quarters of a mile lower down than the towboats usually do go.

(Signed) GILBERT MORTON.

W. S. Brown, for the libellants, being sworn, deposes that he has been in the habit of being towed up and down the Mississippi river for some eight years; states that the custom is that those vessels alongside the towboat have their helm generally put amidships; those at the stern generally steer in the wake of the steamer; those alongside put their helm amidships as before stated, except when coming to some point of the river where the current is very severe, and then some person is generally stationed at the helm; sometimes the steersman is sent by the towboat, and sometimes he belongs to the vessel towed; the Proctor for the claimants here objects to the opinion of the two preceding witnesses, or to any inferences which they may have expressed as evidence in this cause.

(Signed) W. S. BROWN.

I, N. R. Jennings, commissioner, do certify, that on the 13th day of March, A. D. 1848, I was attended by the witnesses, Gilbert Morton and W. S. Brown, and that the foregoing are the true and correct depositions of said witnesses as taken down by me in writing. I further certify, that having carefully read over the said depositions to the witnesses, the same were subscribed to by them in my presence.

In witness whereof I hereunto set my hand and seal, this 13th day of March, A. D. 1848.

(Signed,) N. R. JENNINGS,
U. S. commissioner.

Depositions of Archibald McIntyre and G. Ansaldo.

U. S. DISTRICT COURT,
District of Louisiana

JEAN BAPTISTE PIAGGIO
vs.
THE STEAM TOWBOAT "SHARK."

Be it remembered, that on this the 18th day of March, A. D. 1848, I, N. R. Jennings, duly appointed commissioner by the circuit court of the United States, in conformity with the acts of Congress, did issue notices to the respondents, or their attorneys, in a certain cause in admiralty now pending in the district court of the United States, for the district of Louisiana, in which Jean Baptiste Piaggio is the libellant, and the towboat "Shark" and owners are the respondents; that on this day, at 5 o'clock p. m., I would proceed to take the testimony of

certain witnesses summoned on behalf of the libellants, to be used on the trial of the said cause; accordingly at the said hour the libellants appeared, represented by their proctor, Christian Roselius, esq., and the respondents represented by Beebe, esq., and by virtue of subpœnas duly issued certain witnesses on behalf of the libellants appeared, persons of sound mind and lawful age.

Archibald McIntyre, being the first witness introduced, after being duly sworn to certify the truth, the whole truth, and nothing but the truth, did depose and say, in answer to the interrogatories propounded to him, as follows: That he is master of the barque "Charlotte Harrison;" states that he was towed up the river by the towboat "Shark" some time during last February; his barque was fastened to the starboard side of the "Shark;" at half past two o'clock in the morning, when deponent was going to bed, he heard the master of the "Shark" cry out "port your helm," the helm of the barque; not hearing the man at the helm answer said master, witness got up, and just as he was getting out on deck he heard the said master cry out again, port your helm; the man answered in words that he, witness, could not distictly hear, the purport of which was, that he was going to shift the helm. The mate of the barque "Charlotte Harrison" was coming out at the time witness was going on deck, and he, witness, desired him to go aft and see if the helm was a-port; witness then went on top of the poop, and directly after the brig "Silenzio" struck on the bank; the bow of the "Silenzio" was about three feet out of the water, and the pressure of the current made her keel over a little more with the weight of the two vessels upon her. The next morning about 8 o'clock witness went on board the "Silenzio;" he discovered that the men were working at the pumps, and that there was a good deal of wine coming out with the water; witness knows nothing about the point of the river where the towboats usually cross. To all appearance deponent states, that the "Silenzio" was strained by the shock which she received; states that it was not more than seven minutes between the two orders of the master of the towboat to port the helm of the barque; deponent says the night was a fair one.

Cross examined.

States that the reason of his coming out was that he heard no answer to the order of the master of the towboat to port your helm; states that about seven minutes had elapsed from the time he had heard the order before the man on the barque got to the wheel. Witness did not hear the master of the towboat sing out again after the man answered; states there was no officer on the deck of the barque. The wheel witness could distinctly see from where he stood, but the tiller he could not. Witness did not know which way the helm was. The brig Silenzio struck the bank in about two minutes after the man went to the wheel of the barque. There were two schooners in tow astern of the "Shark." Witness at the time he heard the master of the

towboat cry out, port the helm of the barque, also cry out, port the helm of the brig; from all that witness could see, the master of the towboat was singing out as much as he could to prevent the whole tow from getting on the bank.

Witness being asked, whether the officers of the "Shark," from all that he could perceive, seemed to be attending to their duties, answers, that he had received more attention from other towboats. (To this answer respondents object, as being no answer to the question asked.)

Witness states, that, so far as he could perceive, the officers seemed to use their best endeavors to bring the tows up the river safely; states that Capt. Pennegar, of the "Shark," appeared to be as competent to manage a towboat as any other captain he had seen on the river. Witness says, that when the brig struck the bank her bow was forced out of the water so as to cause her to draw three feet less than her usual draught. The whole tow laid aground until about 11 o'clock of the next day. Their direction was about an angle of forty-five degrees up the river. The barque being on the upper side, together with the force of the current, caused the towboat to careen down on one side, so that one wheel was out of the water. Witness had his vessel relieved by S. boat "Persian," one of the same line with the "Shark," owned by the same parties. She pulled the whole tow off, including the brig "Silenzio," after which they were towed to the city by the "Shark."

(Signed) ARCHIBALD McINTYRE.

The examination here closed, to be resumed on Monday, the 20th instant, at 7 o'clock, p. m.

(Signed) N. R. JENNINGS,
U. S. commissioner.

Examination resumed this day at 5 o'clock.

March 20th, 1848.

C. Roselius, for the libellants, and Beebee, esq., for respondents, being present—

Giovani Ansaldo, on behalf of libellants, being duly sworn states: That, at the time of the accident to the brig "Silenzio," he was aboard the brig Silenzio in the capacity of mate; that he was on the deck of the vessel at the moment of the accident; states that he heard the order given by the captain of the "Shark" two minutes before to the man on board to turn the rudder, which order was immediately executed; about two minutes after this order was given the brig was stranded. The bow of the brig was thrown about six feet above her ordinary level; states that the moment when the brig was being stranded, both the "Shark" and the other vessel in tow were thrown with such violence against the brig as to break her fastenings. There was damage done to the brig by the throwing of the "Shark" and the other vessel in tow, viz., the "Charlotte Harrison," against the brig "Silenzio;"

states that before the accident happened the "Silenzio" did not leak. This was proven by the fact that every twenty-four hours she had been tried, when not more than four or five inches of water every twenty-four hours were found. Immediately after the accident happened, the captain ordered the pumps of the brig to be tried, when about three feet of water were found.

States that after the accident, the twenty-four passengers on board, together with all the crew, were constantly at the pumps, until they arrived in the city, when they thrust some thing or other (composition) into the leak; notwithstanding which they were compelled to go on with the pumping; this attempt to stop the leak with the composition was successful in part; still the leaking continued and the pumps were going until yesterday, when she was put in the dry dock; states that eight pipes of wine, according to his knowledge, were stove in; this was Catalonia wine; in each pipe there was from one hundred and twenty-five to 130 gallons in each pipe. Witness has seen the brig since she was put in the dry dock; states that the copper covering of the vessel was in many places broken, and the keel of the brig is also broken; it is injured in two places; in the one place it was shattered, and in the other it was pierced, or a hole made through it; states there were four persons on deck at the time the order was given to shift the rudder, in addition to the captain, who made the fifth; the captain was sitting near the helm, and two of the four men aforesaid were standing near the kitchen, talking; the mate was on the deck, and the remaining one at the bow. States that the order given to shift the helm was immediately obeyed, and those who were on the deck rushed forward to the helm; states that the captain sung out, all was right.

Cross examination by the respondents.

States that he was first mate of the brig; states that he has no interest either in the brig or cargo; says that he had nothing on board which could be considered a part of the cargo; nothing but his clothes; states that he receives for his services on board the brig a fixed price monthly; he has been two years employed on board; he has never known, during the course of the two years that he has been employed on board the brig, that she ever before was stranded. Witness has been towed four times up the river upon this vessel; states that it was an officer on board the steam towboat which gave the order; he does not know whether or not it was the captain; this officer gave the order two or three times; the captain of the brig, who was quite near the helm at the moment, obeyed the order; the captain of the brig came on deck about midnight, and remained on deck from that time; at the time the order was given to shift the helm, the witness was standing at the windlass; states that all the time he was standing there he saw the captain of the brig standing up and leaning on the bulwarks of the vessel; no time elapsed between the giving the order as aforesaid and the executing it; states that the order was executed as soon as given, but that after the order was

given the master of the "Shark" repeated it two or three times, when walking up and down, after the captain of the brig had proceeded to execute the order; states it was about two minutes, he judges, that elapsed between the execution of the order and the stranding of the vessel; states that he heard no orders given by the officer of the towboat previous to the one mentioned already, "to port the helm;" he does not know whether he was an officer or not; he is under that impression; witness understands no English; witness does not know the river; the brig was stranded at about 5 o'clock, a. m., and remained so until about noon; states that the brig had taken proper steps to be fastened to the towboat, and she was taken or pulled off by another steamer; both steamboats used in getting the brig off the shore, but the towboat "Shark" brought the brig up the river; he heard no orders given by the officers on the Shark to the tow on the other side; witness states that, from the countenance of the officer he could not judge, as he could not see it, but from the repetition of the orders he apprehended something was the matter, and from his manner of crying out these orders.

his
(Signed) GIOVANI ⋈ ANSALDO.
mark.

The examination here closed, to be resumed to-morrow evening, at 4 o'clock, p. m., March 21, 1848.

(Signed) N. R. JENNINGS,
U. S. commissioner.

March 28, 1848.

COMMISSIONER'S OFFICE, *March 21st*, 1848.

The proctors and respondents, represented by their respective proctors, C. Roselius, appeared this day, at 4 o'clock, p. m., according to adjournment, when it was agreed to dispense with the taking of further testimony until the trial of the cause.

I therefore here certify, that the foregoing pages contain the true testimony of the witnesses, Archibald McIntyre and Giovani Ansaldo, as taken by me, in answer to interrogatories propounded.

I further certify, that, as Giovani Ansaldo, one of the witnesses, could speak neither the French nor the English languages, by the consent of parties two gentlemen, to wit, R. M. Lusher and Don Lanata, were sworn to act as interpreters.

I further certify, that the said depositions were carefully read over by the witnesses, and by them signed before

In witness whereof I thereunto set my hand and seal, this 21st day of March, A. D. 1848.

(Signed) N. R. JENNINGS, [SEAL.]
U. S. commissioner.

The following supplemental libel was filed on the 29th day of March, 1848, to wit:

To the honorable Theodore H. McCaleb, judge of the United States district court, within and for the district of Louisiana.

The supplemental libel of Jean Baptiste Piaggio, master and owner of the brig Silenzio, for himself and against the steam towboat Shark, and against all persons lawfully intervening for their interest in the said boat, in a cause of stranding and collision, civil and maritime.

And thereupon the said libellant now further alleges: That, at the date of filing the original libel herein, the damage and injury occasioned to the brig Silenzio had not been thoroughly examined, and the extent of said damage and injury and the cost of the said repair, had not been fully ascertained; that, since the filing of said original libel, the said brig has been hauled out into the dry dock and repaired; that the damage and injury done to the said vessel is much greater than was supposed when this suit was instituted; that, instead of the keel of said brig being forced out of its place, it was broken in three different places, and rendered altogether worthless; that all the copper was forced and chased off the bottom of said brig; that the materials furnished, and labor performed, in repairing said vessel, amounts to two thousand four hundred dollars [and] forty-two cents; that the use of the dry dock for the repairs of said brig cost three hundred and four dollars; that the towage of said brig across the Mississippi river to the dry dock cost twenty-five dollars; that the cost of surveys amounts to the sum of fifty dollars, as will appear by reference to the annexed accounts and exhibits; that, instead of two thousand five hundred dollars, as claimed in the original libel, the libellant is justly entitled to a decree for the sum of four thousand dollars and upwards.

Wherefore the libellant respectfully prays, that the original libel herein filed may be amended, by the averments and allegations set forth in this supplemental bill, in the same manner as if said allegations had been incorporated in said original libel; and he further prays, that a decree may be entered into [in] favor of the libellant for four thousand dollars, instead of two thousand five hundred dollars, as prayed for in the original libel; and the libellant prays that a copy of this supplemental libel be served on the claimants herein.

(Signed) C. ROSELIUS,
Proctor for libellant.

J. B. Piaggio, the libellant, maketh oath, that the allegations in the foregoing libel set forth are correct and true.

(Signed) J. BAPTISTE PIAGGIO.

Sworn to and subscribed before me, this 29th day of March, A. D. 1848.

(Signed) N. R. JENNINGS, *Clerk*,
By A. BOISBLANC, *Dep. Clerk.*

Order thereon.

Let this supplemental libel be filed with the exhibits.

(Signed) THEODORE H. McCALEB,
United States Judge.

Exhibits.

NEW ORLEANS, *March* 23, 1848.

Sales at auction by J. B. Blache, by order and under the inspection of the wardens of the port, and for account of whom it may concern, the following articles belonging to the brig "Silenzio," from Genoa, having undergone repairs:

1 lot of copper,	2,701	11	16¼	- - -	438 91
Charges.					
Port wardens' fees,		21	50		
Advertising -		3	00		
Weighing - -		3	00		
Commission, 2½ of		10	97	- - - -	38 47
Nett proceeds - - - - - -					$400 44

Countersigned, J. CLARK,
A. CAPDEVIELLE,
Wardens.

E. E.

(Signed) J. B. BLACHE.

PORT WARDEN'S OFFICE,
New Orleans, 33d day of March, 1848.

We, the subscribers, wardens of this port, do hereby certify, to whom it may concern, that the copper mentioned in the annexed account of sales was sold at public auction, by our order and in our presence, by J. B. Blache, commissioned auctioneer, after having been advertised in due form of law; and that the said account of sales is in all respects just and true.

In testimony whereof we have countersigned the said account, and now grant this certificate, as the law directs, signed.

(Signed) JOSEPH CLARK,
(Signed) AUGUSTIN CAPDEVIELLE.

A true copy from the records in the office.

(Signed) A. CAPDEVIELLE, *Warden.*

NEW ORLEANS, *y Maryo* 25, 1848.

Polacra Genovesa Silencio à A. Frouty, debe por virar dho brique enquilla y visitar el fondo poniendo los aparejos suficientes, la summa de veinte pesos, $20. Recivi dha cantidad.

(Signed) A. FROUTY.

Brig Silenzio and Owners,
To Hughes, Valette & Thomas.

To 476 lbs. span oakum,	0 18¾	- - -	89 25
To 6 barrels tar and pitch,	3 50	- - -	21 00
To 8 mops - -	0 62½	- - -	5 00
Hawsing iron and bulles	- -	- - -	10 00
18 bundles paper -	2 00	- - -	36 00
520 lbs. composition nails -	0 25	- - -	130 00
97 " " spikes	0 30	- - -	29 10
101 " copper bolt -	0 30	- - -	30 30
77 " spikes - -	0 10	- - -	7 70
194 feet pine - -	0 4	- - -	7 96
656 " oak - -	0 6	- - -	39 36
5270 lbs. sheathing copper -	0 25	- - -	1,317 50
Drayage and ferriage of do.	- -	- - -	11 25
211 days carpenter and caulker -		- - -	580 25
30 " laborer - -		- - -	60 00
4 " pitch boiler - -		- - -	8 00
5 " foreman - -		- - -	17 50
			$2,400 42

New Orleans, March 27th, 1848.

Towage across the river to the dry dock - - -	25 00
To damage to rigging, &c. - - - -	25 00

Brig "Silenzio" and Owners,
To Joseph Girard.

To 27 lbs. bolts, 12½ - - - - -	$3 37
To casting 8 copper bolts - - - -	0 80
8 copper bitys - - - - - -	0 64
	$4 81

New Orleans, March 26th, 1847.

Wednesday, April 5th, 1848. Present, hon. Theo. H. McCaleb.

JOHN BAPTISTE PIAGGIO
vs.
THE STEAM TOWBOAT "SHARK." } 6475.

On motion of the proctor for the respondents, it is ordered that this cause be fixed for trial on Wednesday next, the 12th inst., and that the libellants be notified thereof.

Wednesday, April 12th, 1848. Present, hon. T. H. McCaleb.

JEAN BAPTISTE PIAGGIO
vs.
THE STEAM TOWBOAT "SHARK." } No. 6475.

This cause, fixed for trial to-day, was, by order of the court, continued until to-morrow, at 10 o'clock, a. m.

Thursday, April 13th, 1848. Present, hon. Theo. H. McCaleb.

J. B. PIAGGIO
vs.
THE STEAM TOWBOAT "SHARK."

This cause was to-day called for trial; C. Roselius, esq., appearing for the libellant, and J. Winthrop and Jno. R. Grymes, esqs., for the respondents. The testimony, taken in writing on behalf of the libellant, was read to the court; witnesses were then sworn; the testimony on behalf of the libellants and respondents was closed; and the argument of counsel for the respondents was heard and finished; when, at the hour of three o'clock, the court continued the further trial of this cause, and the hearing of the argument from the libellant's proctor until to-morrow morning, at 10 o'clock.

In court, April 13, 1848.

JEAN BAPTISTE PIAGGIO
vs.
THE TOWBOAT "SHARK."

Memorandum of testimony this day addressed on the trial of the cause above entitled:

By the libellants.

1st. The depositions of J. B. Avegno, Gilbert Morton, U. S. Brown, Archibald McIntyre, Giovani Ansaldo, taken before the commissioner on the 11th, 13th, 18th, 20th, and 21st of March, 1848.
2d. Three certificates of the port warden, dated the 17th and 22d of February and the 20th March, 1848.
3d. Admission of respondents upon the matter of testimony filed.
4th. Five witnesses sworn and examined in open court.
Testimony for the libellants closed.

By the respondents.

1st. Capt. Pinnegar sworn, and certificate filed, releasing him from responsibility.
2d. Charles Wilson, sworn.
3d. McCabe, sworn.
4th. Walker, sworn.
5th. Benj. Miller, sworn.
Testimony for respondents closed.

PORT WARDEN'S OFFICE,
New Orleans, February 17th, 1848.

The subscribers, two of the wardens of this port, having been thereto

required by Capt. Piaggio, did repair on board the brig "Silenzio," lately arrived from Genoa, and assisted by Mr. J. Ross, ship-carpenter, we surveyed the condition of said vessel, as she lay at wharf in the first municipality. The captain reports that, on the night of the 8th or 9th instant, when in tow of steamer "Shark," ascending the river, and being near Poverty point, at about 5 o'clock, a. m., the said towboat ran her ashore in six feet water with such force that she immediately sprung aleak. In this situation they remained until a quarter of an hour before 12, m., when, with the assistance of an additional boat, they succeeded in getting off, and proceeded up to this city, where they moored ship. The captain further states, that the brig leaked so as to keep the pumps constantly at work, making an inch of water per minute, but as the cargo was discharged the leak gradually diminished. We found the said brig in a leaky condition; the second stringer, above the kelson, started. We order said brig to be hove out, or docked, for further examination. All which, therefore, according to the powers vested by law in the master and wardens of this port, we do hereby certify, and grant this certificate.

(Signed) AUGUSTIN CAPDEVIELLE.
(Signed) JOSEPH CLARK.

I certify the foregoing to be a true copy of the record in this office.
(Signed) A. CAPDEVIELLE,
Warden.

PORT WARDEN'S OFFICE,
New Orleans, February 22d, 1848.

The subscribers, two of the wardens of this port, having been thereto required by Captain Piaggio, did repair on board the brig Silenzio, lately arrived from Genoa, and assisted by Mr. J. Ross, ship carpenter, we surveyed her condition as she lay at Algiers, opposite side of the river, hove out on larboard side. We found the keel started, bilge stove in, and started six streaks up; copper torn off, and badly bruised from bow to amidships.

And having caused a number of sheets of copper to be stripped off on the garboard and keel, we found several trunnels and the keel very badly started. It being, in our opinion, dangerous to heave the brig further down, she being a very sharp vessel, we order said brig to be docked for further examination. We order the garboard seam chinsed or caulked, sufficient to keep the brig from leaking, until she can be put in dock.

All which, therefore, according to the powers vested by law in the master and wardens of this port, we do hereby certify, and grant this certificate.

(Signed) AUGUSTIN CAPDEVIELLE,
(Signed) JOSEPH CLARK.

I certify the foregoing to be a true copy of the record in this office.
(Signed) A. CAPDEVIELLE,
Warden.

PORT WARDEN'S OFFICE,
New Orleans, March 20th, 1848.

The subscribers, two of the wardens of this port, having been thereto required by Captain Piaggio, did repair on board the brig Silenzio, lately arrived from Genoa, and assisted by Mr. François Valette, ship carpenter, we surveyed the condition of said brig as she lay in the Louisiana dry dock. We found the copper in many places very badly torn off in streaks, and bruised, apparently, by logs or stumps. The garboard streak plank broken in and badly torn on both sides of keel; main keel started in both scarps; keel badly ragged and the copper off; the copper between wind and water badly torn and ragged; the bottom on larboard side started and bilged in four or five streaks from the garboard and up; a number of trunnels started; butts in many places open; bottom badly strained. After a thorough examination we order the copper to be stripped off to refasten old works, and to replace with new the garboard streaks. And we order the bottom to be recaulked and coppered. The copper we order sold at public auction for account of whom it may concern.

All which, therefore, according to the powers vested by law in the master and wardens of this port, we do hereby certify, and grant this certificate.

(Signed) AUGUSTIN CAPDEVIELLE,
(Signed) JOSEPH CLARK.

I certify the foregoing to be a true copy of the record in this office.
(Signed) A. CAPDEVIELLE,
Warden.

PIAGGIO
vs.
The Steam Towboat SHARK.

It is admitted by the respondents that the three Italian witnesses would depose the same testimony as the mate Anselmo, already taken and filed.

Admission in open court on the trial, April 13th, 1848.
(Signed) N. R. JENNINGS, *Clerk.*

Certificate of release.

J. B. PIAGGIO
vs.
Towboat SHARK and owners. } U. S. district court.

I hereby release and discharge Captain Pinnegar, now and late

master of the towboat Shark, from any and all responsibility which might or could attach to him in consequence of the collision which is the subject of this suit.

On behalf of the Union Towboat Co., New Orleans, April 13th, 1848. (Signed)

JUNIUS BEEBE,
Manager Union Towboat Co.

Friday, April 14th, 1848; present, the hon. T. H. McCaleb.

J. Baptiste Piaggio
vs. } 6475
The Steam Towboat Shark.

The argument in this cause was to-day concluded by C. Roselius, esq., proctor for the libellants.

The court then took the case under consideration.

Judgment.

Saturday, April 15th, 1848; present, hon T. H. McCaleb.

Jean Baptiste Piaggio
vs. } 6475. February term, 1848.
The Steam Towboat Shark.

The court having taken this case under consideration, and being of the opinion that the libellant is entitled to recover the actual damage sustained, to wit, two thousand four hundred dollars and fifty-two cents for the repairs; three hundred and four dollars for dockage; twenty-four for towage across the river; fifty-four dollars for surveys, and two hundred and fifty dollars for eight pipes of wine, making the aggregate amount of three thousand and twenty-nine dollars and forty-two cents.

It is therefore ordered and decreed, that judgment be entered up in favor of the libellant for the aforesaid sum of three thousand and twenty-nine dollars and forty-two cents, with interest from the twenty-ninth of March, 1848, until paid, and costs of suit; and that the steam towboat Shark, her tackle, apparel, and furniture, be condemned and sold to satisfy said judgment, by privilege and preference.

United States district court, for the district of Louisiana, in admiralty sitting.

J. B. Piaggio
vs. } 6475.
The Towboat Shark.

The claimant and defendant herein, Junius Beebe, now comes and prays an appeal from the decree herein rendered on the 15th day of April, 1848, to the circuit court of the United States, for this district, upon his giving bond, with good and solvent security, according to law, and conditioned as the law requires, and upon complying with

4457.

the orders of this honorable court in the premises, and the petitioner now tenders his bond.

(Signed) JOHN WINTHROP.
(Signed) JOHN B. GRYMES,
Per C. T. STEWART.

February term, 1848. Monday, April 24th, 1848. Present, hon. T. H. McCaleb.

JEAN B. PIAGGIO
vs.
The Steam Towboat SHARK. } No. 6745.

Upon motion of C. T. Stewart, for Winthrop and Grymes, proctors for the respondents, and on his presenting a petition of appeal from the judgment of the court rendered in this cause on the 15th instant, the following order was directed to be entered of record.

Let there be granted, according to the prayer of the petitioner, an appeal returnable to the circuit court of the United States, for the district of Louisiana, the third Monday of December, 1848, upon petitioner's filing bond in favor of the libellant herein in the sum of five thousand dollars ($5,000), conditioned as the law requires, and with good and sufficient security; and let such proceedings be had as the law requires.

Appeal bond.

Know all men by these presents, that I, Junius Beebe, as principal, and Oliver Palmes as security, are held and firmly bound, in solido, unto Jean Baptiste Piaggio, the libellant, in the case of Jean Baptiste Piaggio vs. Steam Towboat Shark, his heirs, executors, administrators, in the sum of five thousand dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Whereas the above bounden Junius Beebe, has, on the 24th day of April, 1848, taken an appeal from a final judgment rendered by the honorable the United States district court, for the district of Louisiana, sitting in admiralty on the 13th day of April, 1848, in the case of Jean Baptiste Piaggio vs. the Steam Towboat "Shark," to the next term of the circuit court of the United States, for the district of Louisiana; now the condition of this obligation is such, that the above bounden Junius Beebe shall prosecute his appeal, and shall satisfy whatever judgment, damages, and costs, may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estates, real and personal; otherwise that said Oliver Palmes, surety, shall be liable in his place.

Sealed with our seals, and dated at New Orleans, on the 24th of April, 1848.

(Signed) JUNIUS BEEBE,
Manager of Union Towboat Company.
(Signed) OLIVER PALMES.

Signed, sealed, and delivered in presence of—
C. T. STEWART.

Office of the clerk of the U. S. district court, for the district of Louisiana.

I, N. R. Jennings, clerk of the above entitled court, do hereby certify, that the foregoing 47 pages contain a true, faithful, and correct transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain case in admiralty, wherein Jean Baptiste Piaggio is libellant, and the towboat "Shark," and owners, are respondents. No. 6475 of the docket of said court.

In testimony whereof I have hereunto set my hand, and caused to be affixed the seal of the said court, at the city of New Orleans, this 30th day of November, A. D. 1848, and of the independence of the United States of America the 73d year.

N. R. JENNINGS, *Clerk.*

I, Theo. H. McCaleb, judge of the United States district court, for the district of Louisiana, do hereby certify, that N. R. Jennings, who subscribed the above certificate, is the clerk of the said court; and that faith and credit ought to be given to his attestations as such; and that the above is in due form of law.

Given under my hand and seal, this 13th day of December, A. D. 1848.

THEO. H. McCALEB, [SEAL]
District judge.

United States district court, for the district of Louisiana.

JEAN BAPTISTE PIAGGIO
vs.
The STEAM TOWBOAT "SHARK." } No. 6475.

To Jean Baptiste Piaggio, libellant in the above entitled case, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States, for the fifth circuit, and district of Louisiana, to be holden at New Orleans, on the third Monday of December, 1848, pursuant to an order of appeal granted on the 24th of April, 1848, to Junius Beebe, in the above entitled case in admiralty, wherein you are libellant; the steam towboat "Shark," her tackle, apparel, and furniture, are libelled, and the said Junius Beebe is claimant and respondent; to show cause, if any there be, why the decree rendered against the said steam towboat "Shark," her tackle, apparel, and furniture, and in your favor, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal, this fifteenth day of June, A. D. 1848, and of the independence of the U. S. the 72d year.

THEO. H. McCALEB, [SEAL.]
District judge.

U. S. DISTRICT COURT.

JEAN BAPTISTE PIAGGIO
vs.
THE TOWBOAT "SHARK." } No. 6475.

Returned into court July 18, 1848.

ROBT. M. LUSHER,
Dy. clerk.

Citation of appeal.—Marshal's return.

Received June 16, 1848, and on the 20th of same month served copy of citation of appeal on C. Roselius, esq., proctor for libellants, in person, at New Orleans, said libellants being absent, and said Roselius accepting service on their behalf. Returned 18th July, 1848.

W. WAGNER, *Marshal.*

United States circuit court, fifth circuit, and eastern district of Louisiana.

On the 9th day of January, 1850, the following entry was made on the minutes:

JEAN BAPTISTE PRAGGIO
vs.
STEAM TOWBOAT SHARK. } 1760.

This cause having been assigned for this day, was by consent of parties continued to Tuesday, the 15th instant.

On the 15th January, 1850, the following motion and order was entered on the minutes:

J. B. PRAGGIO
vs.
ST. TOWBOAT SHARK. } No. 1760.

On motion of C. Roselius, esqr., of counsel for appellees, and with the consent of Winthrop, esqr., of counsel for appellant, it is ordered, that the cause be postponed until Thursday next, the 17th instant.

On the 18th January, A. D. 1850, the following order was entered on the minutes:

JEAN BAPTISTE PRAGGIO
vs.
STEAM TOWBOAT SHARK, appellant. } No. 1760.

This cause having been assigned for yesterday, and passed over for

want of time, on motion of Mr. Winthrop, esqr., of counsel for appellants, it is ordered that the same be postponed until after the trial of the chancery causes.

And afterwards, to wit, on the 20th day of February, A. D. 1850, the following entry was made on the minutes:

JEAN BAPTISTE PRAGGIO, appellee,
vs.
STEAM TOWBOAT SHARK, appellant. } No. 1760.

This cause was this day taken up for trial before his honor J. McKinley, presiding judge, and after the introduction of evidence by the parties, was argued by J. R. Grymes, esqr., on behalf of appellants, and C. Roselius, esqr., for the appellees, and submitted to the court, and taken under advisement.

Testimony offered by the libellants.—Deposition of Francis Valette, taken in court on the trial, 20th February, 1850.

Am member of the firm of Hughes, Valette, & Thomas; was employed in 1848 to repair the brig Silenzio, and attended to the work myself; the exhibit annexed to the amended libel is correct; the repairs made to her were necessary, and were ordered by the port wardens; the vessel was injured; the repairs which I made were necessary to put her in the state in which she was before stranding; I found no rotten timbers in her; she was built with good timber, and was about 8 or 9 years of age; a vessel like her, built of such timber, would last from 35 to 40 years; the charge of twenty-five dollars for towage across the river and back is a very fair charge; the $304 for dockage is correct; that is the rate.

Cross examination waived.

Deposition of John Hughes for the libellants, taken in court on trial, and filed 20th February, 1850.

I was employed in the early part of February, 1848, to repair the vessel Silenzio; I am a ship carpenter, and have a dry dock; the vessel was in my dock; we repaired her; I recognise the original account furnished by Hughes, Valette & Thomas, of which I am a member, copied in the transcript for repairs to brig Silenzio, dated N. Orleans, 27th March, 1848, as being correct, and that the same was paid. The repairs made were deemed necessary, and were ordered by the port wardens after examination; I saw the vessel in the dock; I was under her bottom; she was damaged; she was a vessel of 8 years of age; her timber was sound; the timber in vessels of that country are generally superior to ours, but not so well put together; the towage across the river and back at $25 is reasonable.

Cross examination.

I think this vessel was about 8 or 10 years [old]; an American vessel

of her description would, I think, be worth from six to eight thousand dollars; she was well repaired, and with good materials.

Deposition of Dominique Lanata, for libellants, taken in court and filed 20th February, 1850, on the trial.

Was consignee of the brig Silenzio in 1848; after her arrival here she was put in the dry dock for repairs; I paid three hundred and four dollars for dockage, and fifty-four dollars for surveys of said vessel; eight or nine pipes of wine were stoved and lost, containing from 125 to 135 gallons each; I sold the cargo of that wine at the rate of twenty-five or twenty-six cents per gallon; it belonged to Captain Piaggio, as well as the vessel; I knew the vessel before the accident; she was in very fine condition; she was built in Genoa, in 1844 or 1845, and has always traded to this port, and been consigned to me; I saw her here five months and a half in this port before the accident happened.

No cross examination.

Depositions offered by respondents.

Deposition of Captain Pinnegar, filed 20th February, 1850.

Captain ——— Pinnegar, for respondents, sworn in open court on trial, 20th February, 1850, says:

I took the brig Silenzio in tow, on the 7th February, 1848, with the bark in question, and two other vessels; nothing happened until we got up to Poverty point, where we run ashore; it was about 5 o'clock in the morning; I was on deck; it is a bad place in the river, and I told one of the ship's men to stand by the wheel; this was about half a mile below the point; I went, at the time, myself to the boat's wheel, with the steersman; I remained there until we got very near the point, where there is an eddy formed; then she took a slew off the shore, and I put the boat's helm hard a-port, in order to straighten her up again; I saw she would not straighten up, and I called to the bark three or four times before I could get an answer from them; I believe they answered after I had called to them three or four times; I then went across the boat's deck to the brig, and hailed them three or four times, but could get no answer from them; I crossed the deck again, and hailed the bark, and told them they must have their helm hard a-starboard; that it could not be hard a-port, and again told them to put it hard a-port; I then again crossed the deck, and hailed the brig, and told them to put their helm a-port; some one came out in his shirt sleeves and went towards the wheel; as well as I could judge in the dark it was the captain; when he went to the wheel he began to put the wheel a-starboard, and I called to him that he had put it the wrong way; he then put it a-port; we had crossed the river so far then that I saw we were not going to straighten up the river, and I ordered the engine to be stopped, and backed her; the engine made some three or four revolutions back before we struck the bank; it was three or four

minutes after she took the sheer before she struck the opposite bank; the true current of the river there is very narrow; the water there was very high, and the current strong; the officers on the towboat Shark were all on their stations, and on the look-out, when we approached this place; the Shark was a good towboat, and was built for that purpose; was fully officered and manned; the pilot was not at the wheel at the time she took the slew; he had been on deck nearly all night, and I had relieved him; he might have been on deck at the time she struck; I attribute the stranding of the tow to their not getting to the wheel in time, and to putting the helm in the wrong way when they did get there; I saw them put the helm the wrong way on board the brig; have been in the towing trade about nineteen years; it is a matter of first importance to the safety of a tow, that the orders given to the vessel in tow should be punctually and immediately obeyed; at this point of the river the helm of the towboat cannot govern the course of the tow, unless assisted by the helms of the vessels in tow; it is always expected that orders given by the towboats to the ships in tow should be punctually and immediately obeyed; when we ran aground at this point, the ordinary number of men on the Shark were on watch at their posts, and all diligence was used by them to conduct the tow safely through; the tow which the Shark had on this occasion was a heavy tow for this current; it is common for tows to have a ship on each side, and others astern; the tow on this occasion was the brig on one side, of about 250 tons, and a bark on the other, of about 550 tons, without cargo on board, in ballast; the brig was freighted; it is not customary for the towboat to send a man on the ships in tow to attend the wheel, although we sometimes do so; the men at the wheel on the ships in tow are under the orders of the captain of the towboat, and must obey his instructions.

Cross examination.

On this occasion I crossed the river, about 500 yards below the usual place of crossing; I crossed here because I could not help it; we were running at about three miles an hour at the time when she sheered off; the helms of the vessels towed are generally put amidship; they do not require steering at all, except at particular places; the ships in tow are under the charge of the towboat, and are bound to do as we tell them. The bow of the brig when she stranded ran about five feet out of the water; the brig was on the larboard side and struck first; her fastenings gave way, and the steamboat and the other vessel went ahead of her about thirty feet; the brig creened over a little, and the steamboat creened over a little, and the guards of the latter went under her bow a little; all the damage I could see was chafing off the copper; she, (the brig,) leaked badly after the accident; I presumed she hurt her bottom in the water; I did not see Captain McIntyre until after daylight, when he came aboard the boat; there were two officers on duty on board the towboat on this occasion, viz., myself and the engi-

near, and a man at the wheel; the water in February, 1848, was not as high as it is now; the river is now high; this towboat was once of average power; I am still on board of her; I brought a tow the other day; it was three days and a half from the time we started before we reached here; we lay by for 48 hours; at the time of the accident the towboat Shark was as powerful and as efficient as towboats usually are; at the time of the accident there was no one on deck but the steersman and myself; the pilot may have been on deck; witness commanded the Shark at the time of the accident.

Direct resumed.

Among the boats in the towing trade the Shark is considered a fair average boat, capable of taking any ordinary tow up or down the river.

Deposition of Charles Wilson for respondents, taken in open court, and filed February 20th, A. D. 1850.

I was steersman on the Shark at the time of the stranding; I was at the wheel with Captain Pennegar; a short time before we got to the point the captain of the tow sung out for one of the men on the bark to go to the wheel; I had the helm hard a-port at the time when the captain sung out to the sailors on the vessels to put the helm a-port, and the boat not coming in the order was repeated, and she still not coming in the captain left the wheel, and went to see if his order was obeyed; and I heard him sing out put the helm the other way; then she creened and the captain rung the bell to stop her and back her; I do not know how many revolutions she made backwards before striking; at the time the captain sung out to the vessels in tow I could not see if any one was at the wheel; there was some one in the bow of the Silenzio; at the time of the accident the usual watch was on deck; the captain was on the watch, and we were both on the look-out for Poverty point; the tow could not have gone ashore unless the helms on the vessels in tow *in tow* had been put the wrong way; the Shark is a good boat; she was well manned and officered at the time.

Cross examination.

We did not cross at the usual place; it was about three or four hundred yards below; we did not intend to cross here; the boat took a sheer; the current was very strong; we were about a ship's length from the shore; it took the tow five or six minutes to run from the place where the boat first took a sheer to the place where we stranded; the river here is very narrow; cannot tell the distance; before we came here we were going 3 or 4 miles an hour; after we sheered off we went faster, on account of the current and eddy; at the time of the accident I could not see what the men on the vessels were doing; I only saw the man on the bow as above stated.

Deposition of Benjamin Miller for respondents, taken on the trial, and filed in open court, February 20, 1850.

Was on the Shark as mate at the time of the accident; it was not my

watch. I was abed; the captain waked me up by calling out hard a-port, and running across the deck; then I heard the bell ring to stop and back her; she backed several revolutions; when I first heard the bell I began to get up, and about the time I got on the deck she struck; do not know what was done on the bark or brig; I heard the captain call on them to port the helm.

Deposition of Dennis McCabe for respondents, taken on the trial, and filed February 20th, 1850.

Was on the Shark as engineer at the time of the accident; I heard the captain, previous to reaching the point, to give orders to the man to stand by the helm; suppose it was given to both the brig and bark; as she came up to the point she sheered off, and continued her course across the river; the bell was rung to stop and back her; she was backed about two minutes before she struck; the current was setting in very strong where she sheered off, but not very strong where she struck; the Shark was staunch and strong, and as well manned as customary on towboats.

Cross examination.

At this time the engine of the Shark made about eighteen revolutions per minute; she made probably three revolutions backwards before she struck, but cannot say she made four.

Deposition of J. W. Hickey for respondents, taken on the trial, and filed February 20th, 1850, *in open court.*

Am a shipmaster, trading to this port; have known Captain Pennegar, of the towboat Shark, for the last 12 years; have been towed by him a number of times; he is considered one of the best and ablest commanders of towboats on the river; I have known captains to wait for him to tow them up to the city; have been towed up and down the river very frequently; have been to this port two or three times every year for the last 13 years; it is very important that the orders given by the master of the towboat to the helmsman of the ships in tow should be obeyed; and it is customary for the ships in tow to keep some one at the wheel to execute the orders; in many places on the river, it is impossible to govern the course of the tow without the assistance of the helms of the vessels towed.

Cross examination.

As a general rule, in vessels being towed up, it is customary to have the helms of the vessels towed amidships.

Judgment.

And afterwards, to wit, on the 25th February, A. D. 1850, the court rendered final judgment herein, which was entered on the minutes and recorded in the docket of judgments, as follows:

JEAN BAPTISTE PRAGGIO, appellee,
vs.
STEAM TOWBOAT SHARK, appellant. } No. 1760.

This cause having been argued before his honor, John McKinley, presiding judge of this court, on a former day of this term, and the court having maturely considered the same, and being satisfied that the judgment of the district court is erroneous, doth now order, adjudge, and decree, that the same be annulled, avoided, and reversed, and proceeding to give such judgment as should have been rendered, doth now order, adjudge, and decree, that the libellant, Jean Baptiste Piaggio, do have and recover judgment against the appellant for the sum of two thousand six hundred and twenty-nine dollars and forty-two cents, with interest from the 29th March, 1848, until paid; and that the steam towboat Shark, her tackle, apparel, and furniture, be condemned and sold to satisfy said judgment, by privilege and preference. It is further ordered, that libellants pay the costs of the appeal, and that those of the district court be paid by respondent.

Judgment rendered 25th February, 1850. Judgment signed 27th February, 1850.

J. McKINLEY,
Per J. W. GURLEY, *Clerk*.

Rule.

On the 25th of January, A. D. 1850, the court adopted the following rule, and the same was entered of record on the minutes of that date:

Rule.

Whereas the hon. John McKinley, presiding judge of this court, is, in consequence of an infirmity resulting from disease, unable to sign his name, it is ordered that all judgments and decrees rendered in appeal causes be signed by the clerk of this court, in the name of said judge.

And afterwards, to wit, on the 26th day of February, A. D. 1850, an order of appeal was made and entered on the minutes, as follows:

JEAN BAPTISTE PRAGGIO
vs.
STEAM TOWBOAT SHARK. } 1760.

On motion of Winthrop, esq., of counsel for respondent, and on giving the court to understand and be informed that the said respondents feel aggrieved at the decree herein rendered on the 25th instant, it is ordered that an appeal be allowed to the said respondents, returnable to the next term of the Supreme Court of the United States, on their giving bond in the penal sum of six thousand dollars, with Junius